

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

VICKIE GILMORE AND LA'VONTE
FLOWERS, INDIVIDUALLY AND AS CO-
PERSONAL REPRESENTATIVES OF THE
WRONGFUL DEATH ESTATE OF NAHJE
FLOWERS, DECEASED,

PLAINTIFFS,

V.

BOARD OF REGENTS OF THE
UNIVERSITY OF NEW MEXICO,
A BODY CORPORATE OF THE STATE
OF NEW MEXICO, FOR ITSELF AND ITS
PUBLIC OPERATIONS,
ROBERT DAVIE, IN HIS INDIVIDUAL
CAPACITY, AND
NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION,

DEFENDANTS,

NO. 1:20-CV-00853-MLG-LF

**FOURTH STIPULATED MOTION FOR A NEW TRIAL SETTING AND
SCHEDULING ORDER**

Pursuant to Fed R. Civ. P. Rule 16(b)(4), D. N.M. L Rules 16.1 and 40.1, and the Scheduling Order, Plaintiffs Vickie Gilmore and La'Vonte Flowers Individually and as Co-Personal Representatives of the Wrongful Death Estate of Nahje Flowers, deceased, Defendant Board of Regents of the University of New Mexico a Body Corporate of the State of New Mexico, Defendant Robert Davie, and Defendant National Collegiate Athletic Association (hereinafter "the Parties"), by and through their respective counsel of record, file their Fourth Stipulated Motion for a New Trial Setting and Scheduling Order and in support thereof would respectfully show the Court the following:

1. Courts may grant leave for modification of a scheduling order if the “schedule cannot reasonably be met despite diligence of the party seeking the extension.” *Miller ex rel S.M. v. Bd. of Educ. of Albuquerque Pub. Sch.*, 455 F. Supp. 2d 1286, 1304 (D.N.M. 2006), *aff’d sub nom.* 565 F.3d 1232 (10th Cir. 2009) (quoting *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)). In determining whether to grant leave for the modification of a scheduling order, Courts also consider any prejudice to the adverse party. *Id.*

2. There is currently no date set for trial in this Court; See October 5, 2023 Order Granting Stipulated Motion to Amend the Current Scheduling Order [Dkt. 139].

3. The Parties currently have twenty (20) depositions scheduled to take place over the next couple months. In addition, the Parties have participated in extensive written discovery and will most likely require additional discovery following the deposition. As a result, the Parties are unable to conclude taking depositions and written discovery by the discovery deadline of February 15, 2024 and further the parties are unable to conclude the depositions and discovery necessary to inform their respective experts and their reports prior to those disclosure deadlines. Thus, the parties request that all deadlines in the current Scheduling Order [Dkt. 139] be vacated and the Court set a scheduling conference to set new deadlines and a trial setting.

4. The Parties have worked in good faith and with reasonable diligence to meet the current deadlines of the scheduling order, but are unable to complete the necessary written discovery and depositions prior to those deadlines. Neither Plaintiffs or Defendants would be prejudiced by the modification of the scheduling order and new trial setting, but rather, a new scheduling order and trial setting will provide all Parties with the necessary time to complete written discovery and depositions in order to develop their respective claims and defenses. As a

result, the Parties have demonstrated good cause exists to vacate the current scheduling order and to continue the trial setting.

WHEREFORE, PREMISES CONSIDERED, the Parties respectfully request that their Fourth Stipulated Motion for a New Trial Setting and Scheduling Order be granted and that the Court set a scheduling conference to set new deadlines and a trial setting.

Dated: January 16, 2024

Respectfully Submitted,

/s/ Drew Stout

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, a true and correct copy of the foregoing document was filed electronically in compliance with Fed. R. Civ. P. 5(b)(2)(E) on all parties who have consented to electronic service.

/s/ Drew Stout

Drew Stout